

programming their telephones to dial around BPP.<sup>96</sup> Notwithstanding all of these requirements which will be imposed upon the various entities affected by BPP, the Commission's initial regulatory flexibility analysis states that there will be no compliance requirements. By ignoring the many compliance requirements which would result from implementation of BPP, the Commission's initial regulatory flexibility analysis violates the statutory requirements in yet another respect.

Section 603(b)(5) of the Regulatory Flexibility Act requires that an agency's initial regulatory flexibility analysis identify "all relevant federal rules which may duplicate, overlap or conflict with the proposed rule."<sup>97</sup> The Commission's description of all Federal rules which overlap, duplicate or conflict with its BPP proposal is as follows:

"None."<sup>98</sup>

This assertion, too, borders on the ludicrous. As indicated in Section VI of these comments, the Commission's BPP proposal would be directly in conflict with the premises owner presubscription requirements contained in the MFJ and GTE consent decrees. Is the Commission seriously suggesting that antitrust consent decrees do not have the status of federal rules? Clearly they do, and it will be impossible for any of the companies subject to those decrees to comply simultaneously with the Commission's BPP rule and with the consent decrees' equal access requirements, which continue to include premises owner presubscription as the means for provision of equal access from public telephones. Furthermore, the Commission's BPP rule, if adopted, would be in clear conflict with its own rules governing changing long distance carriers.<sup>99</sup> Those

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<sup>96</sup> Further Notice, *supra*, at ¶¶ 81-82.

<sup>97</sup> 5 U.S.C. § 603(b)(5).

<sup>98</sup> NPRM, *supra*, 7 FCC Rcd. at 3034.

<sup>99</sup> 47 C.F.R. § 64.1100.

requirements apply to all primary interexchange carrier ("PIC") selections that are the result of telemarketing, including premises owner PIC selections for public telephones. Since BPP would obviate the entire PIC concept with respect to public telephones, there would be a conflict between the changing long distance carrier rules and BPP. Yet, this conflict is not identified in the initial regulatory flexibility analysis.

The preceding discussion of the shortcomings in the Commission's initial regulatory flexibility analysis is included herein not to show that the Commission has committed several technical violations of the statutory requirements applicable to it under the Regulatory Flexibility Act, but rather to demonstrate that the Commission, in proposing BPP, has largely ignored the adverse impact that the proposal would have on the hundreds of thousands of smaller businesses and on the many public institutions (e.g., colleges and universities, hospitals and other health care centers, and correctional institutions) to whom selection of long distance carriers is an important source of income as well as a means to control fraud and other improper use of telecommunications services and equipment. Both under the Regulatory Flexibility Act itself, and under the public interest standard embodied in the Communications Act, the Commission is obligated to consider carefully the affect that its BPP proposal would have on small private and public businesses.

#### **VIII EFFECTIVE OPERATOR SERVICE COMPETITION CAN BE ACHIEVED WITHOUT IMPLEMENTATION OF BPP**

In the Further Notice, the Commission invites commenters to discuss alternatives for achieving the benefits that it believes would be provided by BPP.<sup>100</sup> The benefits noted by the Commission have in large measure been achieved by passage of TOCSIA and promulgation of the Commission's operator service rules. As a result, today all consumers have easy access to the carriers of their choice, all consumers must be

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<sup>100</sup> Further Notice, *supra*, at ¶ 38.

informed of the identity of a provider of operator-assisted calls by signs on or near telephones and by verbal branding at the beginning of each call. To the degree that violation of these requirements is limiting the pro-competition and pro-consumer benefits of TOCSIA, the most effective means of ensuring that those benefits are indeed available to all consumers is enforcement by the Commission of the statute and the rules through use of its forfeiture authority and other sanctions available to it. The cost to the public of comprehensive and effective enforcement should be minuscule in comparison with the billions of dollars that would be expended in BPP implementation costs and recurring expenses.

In addition, the competitive advantage enjoyed by AT&T in the operator service market can be reduced without BPP simply by the Commission reconsidering its unwise policy of acquiescing in AT&T's insistence that its CIID calling cards be accorded proprietary status and 0+ access despite the fact that those cards are not truly proprietary cards.

Finally, in considering whether to mandate that the telephone industry implement BPP, the Commission should be mindful of the fact that many of the problems noted in the NPRM and in the Further Notice already have been substantially reduced as a result of carrier actions and consumer behavior. The dramatic growth in access code-based services and the success of major carriers in persuading customers to use those services illustrates convincingly that consumers are willing to dial codes to reach their chosen carriers and that there is no need to force the telephone industry to spend billions of dollars -- to be recovered from ratepayers -- on a "solution" to a problem that already has been reduced and that appears to be in the process of solving itself.

## CONCLUSION

For all of the reasons discussed in these comments, Oncor does not believe that the public interest would be served by the mandatory implementation of BPP. Oncor looks forward to reviewing the initial comments of other interested parties and to addressing the views of those other commenters in its reply comments. However, based upon the information already before the Commission and upon Oncor's familiarity with the interexchange services market, in general, and the operator service market, in particular, it respectfully urges the Commission to focus its efforts on effective enforcement of TOCSIA and the Commission's operator service rules, and to taking the regulatory actions necessary and appropriate for preventing dominant carriers from exploiting their advantages in the operator service market, and that it determine that BPP is not in the public interest, and that its implementation by the local exchange carrier industry should not be required.

Respectfully submitted,

ONCOR COMMUNICATIONS, INC.

A handwritten signature in dark ink, appearing to read "M. F. Brecher", is written over a horizontal line.


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August 1, 1994

## CERTIFICATE OF SERVICE

I, Michelle D. O'Brien, hereby certify that I have on this 1st day of August 1994, copies of the foregoing *Comments on Further Notice of Proposed Rulemaking* were served by first class mail, postage prepaid, upon the following attached list.

  
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